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# 5

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## CONSERVATOR OF THE ESTATE

### *Managing the Conservatee's Finances*

**A**s **conservator of the estate**, you are responsible for managing the conservatee's finances. Your role is to protect the conservatee's **income** and **assets** by making sure the conservatee's bills are paid, investing the conservatee's money, making sure that the conservatee's property is insured, seeing that the conservatee is receiving all the income and benefits to which he or she is entitled, and being sure that tax returns are filed on time.

#### **Special Note for Limited Conservators**

If you are a conservator of the estate in a **limited conservatorship**, the order appointing you and your Letters of Conservatorship will specify those areas you are allowed to manage.

Read Chapter 3 on limited conservatorships, and then look through this chapter to read about the particular areas you are authorized to handle.

## SUMMARY OF TIMELINE AND RESPONSIBILITIES FOR A CONSERVATOR OF THE ESTATE.

- Step 1** You **qualify** and are appointed conservator of the **estate**. You may be required to obtain a **bond** to qualify.
- Step 2** Obtain your **Letters of Conservatorship** and use **certified copies** of the Letters to notify the conservatee's banks, creditors, stock-brokers, and others (such as the Social Security Administration or Veterans Affairs) that you are authorized to act on the conservatee's behalf.
- Step 3** Figure out what assets the conservatee owns and locate them. Take immediate steps to protect assets. Consult your lawyer about any urgent steps that may be necessary to prevent loss, such as freezing the assets so that no one but you has access to them. **L** Change the conservatee's mailing address so that financial correspondence and billing comes to you.
- Step 4** Prepare an **Inventory and Appraisal** of the conservatee's assets and **file** it with the court clerk within *90 days* after your appointment. **L**
- Step 5** Evaluate the conservatee's financial needs and draw up a plan for meeting those needs (your conservatorship plan).
- Step 6** Set up a simple, accurate system for keeping records of conservatorship income and expenditures.
- Step 7** Protect and manage the conservatee's finances by
- Taking control of the conservatee's assets
  - Collecting income due to the conservatee
  - Making a budget for the conservatee to live on
  - Paying the conservatee's bills with the conservatee's money
  - Investing the conservatee's money
  - Protecting the conservatee's assets
  - Keeping good records of income and expenditures
- Step 8** You must file an **accounting** showing how you handled the conservatee's income and property within one year after your appointment and at least every two years after that. (Conservators of small estates may be relieved of this task, but don't assume that unless the court excuses you.) **L**

**Step 9** You will serve as conservator until you have filed a **final accounting** and a judge officially **discharges** you as conservator. This may happen if you resign, the conservatee dies, a judge withdraws your appointment and replaces you with a new conservator, or a judge decides the conservatee doesn't need a conservator any longer.

## 1. Getting Started

Once you have been appointed conservator of an estate, you must take certain steps to qualify to serve. When you have qualified, you must obtain your Letters of Conservatorship (often just called Letters) from the court, authorizing you to act as conservator.

The next step is to let the people and institutions involved with the conservatee's property and finances know that you have been appointed conservator, by delivering to them certified copies of your Letters. You then take control of the conservatee's assets, prepare an inventory for the court listing them, and develop a plan for how you will manage the **conservatorship estate**.

At the outset, you may need to take fast action to protect assets and prevent confusion or financial loss. If you are represented by a lawyer, you should discuss all of the tasks involved and decide who will be responsible for each. **L**

### A. Qualifying to Serve as Conservator of the Estate

Once you have been appointed as either **limited** or **general conservator** of an estate, you must qualify before you start to manage the conservatee's property and finances.

To qualify, you must obtain a bond (unless the judge hasn't required it in your particular case) and file it with the court clerk; see Section 1(B) later in this chapter. You must also do the following:

- Sign and file an acknowledgment that you received a statement of the duties and liabilities of the office of conservator, and also that you received a copy of this handbook. (This acknowledgment is on the statement of your duties and liabilities, **Judicial Council** form GC-348, entitled *Duties of Conservator and Acknowledgment of Receipt of Handbook*. A blank copy of this form is included in Appendix F at the back of this handbook.)

- Sign an oath, also called an affirmation, that you will perform your duties as conservator according to law. (This affirmation is on Judicial Council form GC-350, *Letters of Conservatorship*. See Appendix F at the back of this handbook.)
- Satisfy any other requirements that your local probate court may have.

See Chapter 1, Section 6, concerning the duties of a spouse or domestic partner of a conservatee when there are possible changes in the conservatee's marital or domestic partnership status.

## B. Obtaining a Conservator's Bond

A conservator's bond is like an insurance policy for the conservatee's estate. Money from the estate is used to pay the premium to a special kind of insurance company, called a **surety company**, each year. If the premium is not paid, a judge may remove the conservator—that is, terminate the conservator's authority to act.

If the estate loses value and a judge decides that the conservator's dishonesty, misconduct, or negligence was to blame, the surety company will pay the estate for the loss, and then it will attempt to collect the amount it paid from the conservator's own money or property.

A bond is issued for a specific dollar amount. That amount is the maximum amount the surety company agrees to pay the estate if necessary. The premium payable to the surety company is based on that amount. The bond is usually set at an amount equal to the total of the estimated value of the conservatee's personal property plus the estimated annual income from the conservatee's real and personal property plus the estimated annual amount of certain public benefits the conservatee is expected to receive. The court may allow a conservator to file a smaller bond if he or she elects to put some of the conservatee's money in a **blocked account**, a special kind of bank account that does not permit withdrawals unless the court authorizes them.

There are two Judicial Council forms used to create a blocked account. The court's order authorizing the account is Judicial Council form MC-355, *Order to Deposit Money into Blocked Account*. The second form is MC-356, *Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account*. This document must be signed by an authorized representative of the bank where the account has been opened, stating that the bank received the court's order author-

izing the account and that the bank recognizes the account as a blocked account that requires a court order before a withdrawal is permitted, and providing other information about the account. Copies of these forms are included in Appendix F at the back of this handbook.

There is no Judicial Council form for a petition for authority to establish the blocked account. This authority is usually requested in the petition for appointment of conservator because that petition contains the estimated value of the conservatee's estate that the court relies on to determine the size of the bond. However, you may ask for this authority at any time. If you want to do so after your appointment, you or your lawyer must prepare your petition without using a form. **L**

Once the blocked account has been established, you must petition the court for authority to make a withdrawal from the account. This is done on Judicial Council form MC-357, *Petition for Withdrawal of Funds from Blocked Account*. The court's order authorizing the withdrawal is Judicial Council form MC-358, *Order for Withdrawal of Funds from Blocked Account*. Copies of these forms are included in Appendix F at the back of this handbook.

The amount of the bond in your case was set by the court at the time you were appointed conservator of the estate. It was based on the estimated size and composition of your conservatee's estate shown in the petition for appointment of conservator.

The initial estimated value of the estate may turn out to be too low, or the kind of assets held may change, for instance, if you sell the conservatee's real property for cash. The amount of bond on file may become less than the amount required by law. If that happens you must immediately apply to the court for an order increasing the amount of the authorized bond. You then must obtain and file the increased bond with the court.

Sometimes the amount of bond on file becomes greater than the amount required by law. This can happen if the original estimate was too high, or if expenditures approved by the court for the support of the conservatee reduce the estate below its estimated size. If that happens, you may apply to the court for an order reducing the amount of the required bond. If the court orders the bond reduced, the surety company will issue a new bond in a lower amount to replace the original bond, and you may receive a refund of unused bond premium on the original bond in the year of the change. The bond premium will also be lower in future years.

You should consult with your lawyer on any questions about bonds, and both of you should always be aware of the required amount of bond for your conservatee's estate and the value and kind of property in the estate at any given time. **L**

## C. Obtaining and Using Letters of Conservatorship

When you have qualified, you must obtain your Letters of Conservatorship from the court clerk's office. They authorize you to act as conservator.

The Letters also show others that you are the duly appointed conservator with authority to act for the conservatee. You will prove your authority to act by showing or delivering certified copies of your Letters to persons, companies, or government agencies concerned with the conservatee's property or financial affairs. For example, banks, stockbrokers, insurance companies, other businesses, and many public agencies will ask for certified copies of your Letters before they will accept your instructions concerning the conservatee.

See Chapter 1, Section 3, for more information about qualifying, Letters of Conservatorship, and obtaining certified copies of your Letters.

To protect the conservatee's home and other real estate, you or your lawyer must **record** a certified copy of your Letters with the county recorder in each county where you think the conservatee owns an interest in any real property, including a security interest, such as a mortgage or trust deed securing a promissory note the conservatee receives payments on. Recording the Letters keeps the real property from being sold, transferred, or offered as security for a loan without your knowledge and prevents anyone from claiming that he or she did not know about the conservatorship when he or she dealt with the conservatee or the conservatee's real property. See the sample letter that follows.

Note that the sample letter sends both a certified copy of the Letters and an uncertified photocopy of them. That is always a good idea when sending anything to be recorded. The recorder will conform the uncertified copy by placing the recording information on it (the date and time of recording and the document number assigned by the recorder). The copy will then be returned in the envelope you have provided, often within a few days. The certified copy actually recorded will eventually also be returned to the person identified at the top of the document (usually your lawyer, if you have one). However, this may take several weeks. In the meantime, the conformed copy is good proof that the document has in fact been recorded on the date shown.

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## SAMPLE LETTER TO COUNTY RECORDERS

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2230 Montezuma  
Napa, CA 94558  
June 3, 2002

Napa County Recorder Office  
1195 Third St., Room 110  
Napa, CA 94559

↓  
RE: Conservatorship of the Estate of Luigi Oreste  
Rossi, also known as Lou O. Rossi

Dear County Recorder:

Please record the enclosed certified copy of the  
Letters of Conservatorship. I am enclosing a certified  
copy and a photocopy. Kindly conform the photocopy and  
return it in the self-addressed, stamped envelope  
enclosed.

I am enclosing a check in the amount of \$\_\_\_\_\_ to cover  
the recording fee.

Thank you for your assistance and cooperation.

Sincerely,

Angela Mello  
Conservator of the Estate  
of Luigi Oreste Rossi

Enclosures:

Certified copy of Letters of Conservatorship  
Photocopy of Letters of Conservatorship  
Check  
Self-addressed, stamped envelope

*If the conservatee  
sometimes uses a  
variation on his or  
her name, such as  
a middle initial or  
maiden name,  
provide that  
information after  
"also known as."*

*Call the recorder's  
office to find out  
the proper amount,  
and fill in that  
figure here.*

## D. Working with the Conservator of the Person

If someone else is conservator of the person, you should begin working with that person as soon as possible. You will need to stay in touch with the conservator of the person to decide which arrangements for the conservatee's care are needed and are affordable.

## E. Working with the Conservatee

Try to involve the conservatee in your decisions. You must treat the conservatee with respect, making choices that benefit the conservatee and encourage self-esteem. However, in the end you must make the necessary decisions. The court will hold you, not the conservatee, responsible.

## F. Developing Your Plan of Conservatorship

Chapter 6, Section 1, of this handbook explains how you can prepare a plan for the conservatorship. Whether you are conservator of the estate, conservator of the person, or both, the plan will help you keep track of all of your duties and fulfill them on a regular basis. Although formal conservatorship plans are not required in all cases in California, some courts require conservators to prepare and file them in all cases, and all courts may require them in any given case. Speak to your lawyer about your court's specific requirements. **L**

Whether or not you are required to prepare and file a formal plan, it is recommended that you keep at least an informal one, in the manner suggested in Chapter 6. It is also a very good idea to review and adjust your plan periodically. Periodic review and adjustment is essential because changing financial conditions or other unexpected events can affect the estate. For more information, read Chapter 6, Section 2.

## G. Keeping the Court Informed of Address Changes

If the conservatee's residence address or telephone number changes after your appointment, you must promptly notify the court of the change by completing and delivering to the court, in person or by mail, a form notice of the change. A sample of this form is included in Appendix F, at the back of this handbook. It is Judicial Council form GC-080, called *Change of Residence Notice*.

Your lawyer will have, or can get, copies of the change-of-address form. Your lawyer will prepare it and will arrange for its delivery to the court, so you



must be sure your lawyer is informed before the conservatee's residence address or telephone number are changed. **L**

If you don't have a lawyer, you can get copies of the form from the court, or you can get them from the other sources described in Appendix F. Your court may impose a time limit for you to give the information to the court. The Superior Court of Los Angeles County, for example, requires that it be supplied within 30 days of the date of the change.

You must notify the court of any change in your address or telephone number if you don't have a lawyer. The court may require that you provide this information even if you are represented by a lawyer, or it may require that you provide current statements of your address and telephone number, and those of the conservatee, with every account and report you file, even if the information has not changed. The court may have a local form for this purpose. If not, you may provide the information by letter.

Even if it is not required, it is a good idea to advise the court of any changes in your address and telephone number. Include the conservatorship case name and the court's case number in any letter you send to the court. Address your letter to the clerk of the court, not to the judge. If you are in a large county, address it to the probate clerk. Send it to the address of the court where your appointment hearing was held. Send a copy of your correspondence to the court investigator's office. That office will usually be in the same location as the court, but you should check to make sure.

## **2. Responsibilities of a Conservator of the Estate**

The conservatee's assets and most of his or her income are known as the conservatorship estate, or just the estate. As conservator of the estate, you must protect and manage the estate for the conservatee's benefit. The court also may authorize you to use estate assets for the benefit of the conservatee's spouse or other relatives, such as minor children.

As protector and manager of the conservatee's assets, you must do the following:

- Locate and take control of the assets and make sure they are adequately protected against loss.
- Make an inventory of the assets for the court.

- Collect all of the conservatee's income and other money due and apply for government benefits to which the conservatee is entitled.
- Make a budget for the conservatee, working with the conservator of the person, or, if there isn't one, working with the conservatee or his or her caregiver.
- Pay the conservatee's bills and expenses on time and in line with the budget you have made.
- Keep track of how a trustee or other party is managing any of the conservatee's assets in his or her control.
- Invest the estate assets and income in safe investments that will meet the conservatee's needs and the court's requirements. You should consult with your lawyer concerning any investments of the conservatorship estate. Some investments require prior court approval or may not be authorized under any circumstances. **L**
- Periodically account to the court and to other interested persons about income coming into the estate, expenditures, and the remaining conservatorship property.
- Prepare a final report and accounting of the estate when the conservatorship ends.

### 3. Giving Notice of the Appointment

As you locate the conservatee's assets (see Section 4 later in this chapter) and acquire knowledge of the people and institutions that have a financial relationship with the conservatee, notify them promptly about your appointment as conservator.

People and institutions that need to be notified may include

- The conservatee's employer, if the conservatee is working
- Banks, savings and loans, credit unions, and other financial institutions
- Stockbrokers
- Companies in which the conservatee owns stock

- Insurance companies and agents
- All companies and banks where the conservatee has charge accounts, credit cards, or an ATM card
- Government agencies, such as the Social Security Administration, from which the conservatee receives payments
- Retirement plans
- The conservatee's accountant or tax return preparer
- Trustees, if the conservatee has trusts or is a beneficiary of someone else's trust; see Section 7(M) later in this chapter
- Creditors, or people to whom the conservatee owes money
- Debtors, or people who owe the conservatee money
- Anyone else who sends the conservatee money: for example, the tenants of any rental property owned by the conservatee
- Anyone involved in a lawsuit by or against the conservatee, especially any lawyer who is representing the conservatee in a lawsuit
- The post office, if you want the conservatee's mail to be forwarded to your address

Be sure to include the new address to which such people and institutions should send any future correspondence, bills, or payments. See the sample notice letter that follows.

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## SAMPLE LETTER OF NOTICE OF APPOINTMENT

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*Use the address of  
your local Social  
Security office.*

53980 W. Petaluma Ave.  
Fresno, CA 93711  
March 9, 2002

*If the conservatee  
sometimes uses a  
variation on his or  
her name, such as  
a middle initial or  
maiden name,  
provide that  
information after  
"also known as."*

→ Social Security Administration  
5090 N. West Avenue  
Fresno, CA 93711

→ RE: Conservatorship of the Estate of Barton George  
Krikorian, also known as Bart Krikorian

Conservatee's Birth Date: August 12, 1907

Conservatee's Social Security Number: 333-22-1111

Dear Administrator:

Please be advised that I have been appointed conservator  
of the estate of Barton George Krikorian. Please have  
all future checks made out to me, Harold Krikorian,  
Conservator of the Estate of Barton G. Krikorian, and  
sent to me at the above address.

I have enclosed a certified copy of my Letters of  
Conservatorship for your records.

Sincerely yours,

Harold Krikorian  
Conservator of the Estate  
of Barton George Krikorian

Enclosure: Certified copy of Letters of Conservatorship

**Signing letters and other documents** You’ve just seen the second of several sample letters disclosing to others a person’s position as the conservator of an estate. Please note in this sample how the conservator’s signature block is set up, just below the space for the conservator’s actual signature:

Harold Krikorian  
Conservator of the Estate of Barton George Krikorian

When you sign a contract as the conservator of an estate, you bind, or obligate, the conservatee’s estate, not your own. The other party to the contract must look to the conservatee’s estate, not to your property, for payment.

If the other party to a contract didn’t know that you were acting as a conservator when the contract was signed, he or she will assume that you signed the contract as an individual, with the intent to obligate your own property or credit. If that assumption is reasonable under the circumstances, you might be held personally responsible.

It is important to make sure that the people or organizations you deal with when you act as conservator know that you are acting in that capacity. One way to do that is to deliver copies of your Letters. Another way is to identify yourself as the conservator of the estate in all letters that you send to anyone concerning your conservatee’s financial affairs, in the way noted here. You can, of course, simply tell anyone you deal with that you are acting as a conservator. However, to protect yourself in case of a dispute later, you should make sure there is some written record that shows that you clearly advised the other person that you were acting as a conservator at the time of the transaction between you.

In particular, make sure any written lease, contract, or agreement you sign for the benefit of your conservatee identifies you throughout the document as the conservator of his or her estate. At the very least, add the line “Conservator of the Estate of [conservatee’s name]” just below the place where you sign the document, even if you have to handwrite this at the time you sign.

You should also be careful not to agree to be personally responsible for, or guarantee, any payments due under any contract you sign as conservator. Language imposing this obligation may be buried in the fine print. If you have any questions about a contract you are thinking of signing or are not sure of any of its terms, you should have your lawyer review it **before** you sign. **L**

Finally, all checks you write for the benefit of the conservatee, including all payments under any contract, should identify you as conservator of his or her estate. You should make no payments from your own checking account or charged to your own credit card.

## 4. Locating the Conservatee's Assets

Find and take control of the conservatee's income and assets. This means identifying the assets the conservatee owns and the income he or she receives and is entitled to receive, finding the assets and the sources of income, taking all necessary immediate steps to protect them from loss or damage; and marshalling, or collecting, them, usually by transferring them into your name as conservator. **L**

The information you gain from taking control of the conservatee's assets will help you prepare an Inventory and Appraisal. You should begin the inventory as you go through the process of identifying and locating assets. It must be submitted to the court within 90 days of your appointment (see Section 6 of this chapter and Appendix C at the back of this handbook).

### ASSETS TO LOOK FOR

- Cash
- Uncashed checks and refunds
- Bank accounts (checking, savings, certificates of deposit)
- Stocks
- Bonds
- Promissory notes and other legal claims on others, whether or not reduced to court judgments **L**
- Partnerships
- Other business interests
- Pensions, **Keogh plans, 401k plans, Individual Retirement Accounts,** and other retirement plans
- Life insurance policies
- Real estate
- Furniture
- Antiques

- Artwork
- Jewelry
- Valuable dogs or other pets
- Valuable collections
- Vehicles

## **INCOME TO LOOK FOR**

- Government benefits such as social security, **SSI**, veterans', disability, or welfare
- Insurance benefits
- Wages; severance pay; or disability, vacation, or sick leave owed to the conservatee
- Pensions
- Retirement plan payments or withdrawals
- Settlements from divorce, injury, or other lawsuits
- Payment of debts owed to the conservatee
- Money from trusts
- Rental income
- Annuities
- Reparations from foreign countries

## **A. Assets That Aren't Part of the Conservatorship Estate**

Certain assets or income of the conservatee are not part of the conservatorship estate. You can't take control of them. You are also not responsible for them and do not have to account to the court for them.

**Current salary or wages** If the conservatee is working, the salary or pay from that work is the conservatee's to use as if the conservatorship did not exist. The conservator neither collects nor accounts to the court for the conservatee's current wages.

**Assets in a living trust** If the conservatee has created a **revocable living trust**, the assets held by the trustee of that trust will be handled as provided in the trust documents and not as part of the conservatorship.

**Community property of a married conservatee** If the conservatee is married and his or her wife or husband has legal capacity, the capable spouse has the exclusive right to manage and control the couple's **community property**. That property is not part of the conservatorship estate unless the capable spouse consents in a writing filed with the court in the conservatorship that some or all of it is to be included.

However, the capable spouse has a legal duty to support the conservatee spouse. If the capable spouse is managing some or all of the couple's community property outside the conservatorship, this duty may be enforced against that property in the conservatorship proceeding rather than in a marital support proceeding under family law. In addition, the court in the conservatorship may order the capable spouse to apply community property that he or she is managing to the support of the conservatee, at the request of the conservator, the conservatee, a relative or friend of the conservatee, or any other interested person. **L**

If the capable spouse has **separate property**, he or she may still have a duty to support the conservatee spouse from that property. However, that obligation must be enforced by a family law department of the superior court, not the probate court. If you have any questions concerning a capable spouse's separate property, you (and possibly your lawyer in the conservatorship proceeding) should talk to a lawyer experienced in family law. **L**

If you are married to your conservatee, you should consult closely with your lawyer about the character (community or separate) of your property, about which portions of your community property you should manage inside or outside the conservatorship, and about the support you provide the conservatee from that property or from your separate property. **L**

Even if you are not the spouse of your married conservatee, you should consult frequently with your lawyer about the questions mentioned in this section, particularly questions about the character of the property held by the



conservatee or his or her spouse and questions concerning support from the conservatee's community property or from the spouse's separate property. **L**

If both spouses have conservators of their estates, one-half of the community property of the couple is included in each conservatorship estate and is managed by the conservator of that estate, unless the two conservators agree otherwise and the court in either conservatorship proceeding has approved the agreement. If your conservatee's spouse also has a conservator, you should cooperate and work as closely together as you can.

## **B. How to Find the Conservatee's Assets**

Look through the conservatee's accumulated mail. Make sure to contact all senders of mail to ensure that new mail is sent directly to you, and check all mail that is forwarded or sent directly to you.

Carefully look through the conservatee's home for cash, ownership papers, financial records, recent mail, income tax returns, deeds, insurance policies, and other valuables. Look in the conservatee's safe deposit box; see Section 5(B) later in this chapter.

The best sources of information are the conservatee and his or her close friends, relatives, business associates, and accountant or lawyer. If the conservatee is confused or forgetful, double-check everything he or she tells you.

If you believe someone else has some of the conservatee's assets or records that you should have, but that person won't cooperate with you, consult your lawyer to find out about court procedures that can help you. **L**

## **C. Assets Owned by the Conservatee and Others**

The community property of a married conservatee doesn't become part of the conservatorship estate unless both spouses are conservatees or the spouse who isn't in conservatorship agrees in writing that all or part of the community property may go into the conservatorship estate; see Section 4(A) earlier in this chapter.

Real estate, bank accounts, and other property owned with others create special problems. Co-owners should be contacted immediately to figure out how much of the property belongs to the conservatee and how much belongs to the co-owners.

Co-ownership is a complicated legal area. Whenever you change the owner of an asset from the conservatee to the conservatorship estate, the rights of

co-owners are affected. The consequences may happen after the conservatee's death or while the conservatee is alive. Consult your lawyer about property owned with others. **L**

## 5. Taking Control of the Conservatee's Assets

You must take control of the conservatee's assets and transfer them into the conservatorship estate.

### A. Bank Accounts

Open a checking account right away in this name:

Conservatorship of [conservatee's name], [your name],  
Conservator of the Estate

It is important to use this name. Use the conservatee's social security number, not your own, to open this account. Instruct the bank to send all statements and canceled checks directly to you.

Consider also opening a savings or money-market account in the same way. Money not needed for current ongoing expenses should be deposited in an interest-bearing savings or money-market account.

**Asking financial institutions for information** Send a letter, along with a certified copy of your Letters, to all banks, savings and loans, and other financial institutions where you think the conservatee had accounts on the date you were appointed. Ask what accounts, if any, the conservatee has there and how the conservatee's name appears on them. Also ask the bank to give you the current balance of each account and the balance on the date you were appointed. If you don't have the conservatee's original statement for each account for the period that includes the date of your appointment, ask for a copy of that statement.

The bank will have to send information on a required Judicial Council form directly to the court concerning these accounts when you change any of them to show the conservatorship, or when you close any of them and replace them with new accounts in the name of the conservatorship. Although the bank is not required to send you a copy of this form, it is a good idea to ask it to do so. The copy may be useful when you prepare your first accounting with the court. See the discussion following the sample letter, and Section 8 of this chapter, which follow.

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## SAMPLE LETTER SEEKING ACCOUNT INFORMATION

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6 Puente Terrace  
La Jolla, CA 92037  
July 5, 2002

Operations Officer  
Hometown Federal Bank  
900 Washington Boulevard  
Los Angeles, CA 90053

↓  
RE: Conservatorship of the Estate of Rose Gertrude  
Weinstein, also known as Rose Gradsky

Bank account number 120-03255

Social security number 333-33-3333

Dear Operations Officer:

I have been appointed conservator of the estate of Rose G. Weinstein. Enclosed is a certified copy of my Letters of Conservatorship.

Please confirm that Mrs. Weinstein holds the account identified above. Please also advise me of the rate of interest, if any, paid on this account and the balances in the account as of May 7, 2002 (the date I was appointed conservator), and as of the date of this letter.

I revoke any signature authorization and any power of attorney applicable to this account, to the fullest extent allowed by law. Please advise me immediately if there is a durable power of attorney applicable to this account.

Please provide me with the information and forms I need to transfer the money in the above-identified account to a checking account in my name as conservator of Mrs. Weinstein's estate. Please contact me immediately for additional instructions if the opening balance of the new account would exceed \$100,000.

I understand that all accounts in FDIC institutions may be withdrawn before they mature with no early withdrawal penalty if a court has ruled that the account holder is no longer capable of managing her own financial affairs, and if the account was issued before the court's decision and not extended or renewed after that date. If these regulations do not apply to the above-identified account, please let me know.

*If the conservatee sometimes uses a variation on his or her name, such as a middle initial or maiden name, provide that information after "also known as."*

## SAMPLE LETTER SEEKING ACCOUNT INFORMATION

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I also understand that you are required to complete and file a form directly with the court identified in the enclosed Letters when the above-identified account is transferred to me as conservator. I ask that you send a copy of the completed form to me when you send the original to the court.

*If you haven't found the conservatee's original statement for the account for the period that includes the date of your appointment, add the following paragraph.*

I also ask that you provide me with a copy of your account statement for the above-identified account for the period that includes May 7, 2002. I have been unable to find any of Mrs. Weinstein's original statements for this account.

I have found an unidentified safe deposit key in Mrs. Weinstein's home. Can you advise whether she had a safe deposit box in your institution? If so, I will be pleased to meet with you to see if this key fits a box in your bank, to enter the box, and to inventory its contents. I would like to be present when that is done. If Mrs. Weinstein has a box at your institution but the key does not fit, I would also like to be present when the box is drilled.

Last, can you advise me as to whether Mrs. Weinstein has any accounts in any branch of your institution in addition to the account identified above? If so, can you also provide me with the same information concerning each account as requested above, plus the branch name and address where each account is located?

I am enclosing this information and a self-addressed, stamped envelope for your use in returning these documents to me. If there is a charge for this service, please let me know.

Thank you for your prompt assistance in this matter.

Yours truly,

Martin S. Weinstein  
Conservator of the Estate  
of Rose Gertrude Weinstein

Enclosure: Certified copy of Letters of Conservatorship

**Revocation of powers of attorney concerning bank accounts** Some bank or savings and loan accounts create rights in a person other than the owner of the account to withdraw from the account, by language on the signature card for the account that creates a **power of attorney**. Depending on the language used on the card, the power of attorney is either durable or nondurable.

A **nondurable power of attorney** is not effective once the **principal** (the person who created the power and for whom the **attorney in fact** acts under it) loses legal capacity. The appointment of a conservator of the estate for a principal establishes the principal's incapacity. But a nondurable power of attorney over a bank account remains effective if the bank relies on the power before it has been given written notice of the principal's incapacity.

The Letters of Conservatorship mentioned in the sample letter would give sufficient written notice to the bank of the principal's incapacity. The suggested language in the sample letter revoking all powers of attorney is not necessary to end the effectiveness of a nondurable power if the bank acts correctly. The language is intended to emphasize to the bank that it should act correctly, by preventing any attorney in fact appointed under a nondurable power from continuing to act on the conservatee's accounts at that bank.

A **durable power of attorney** remains effective upon the principal's incapacity. A conservator of the estate can revoke a durable power of attorney created by the conservatee only with prior authority of the court.

The suggested language in the sample letter would revoke only nondurable powers because the court has not given authority to revoke durable powers. If the court had granted this authority, the letter to the bank would mention that fact and would enclose a copy of the court's order. However, the bank will have the signature cards for its accounts and should be willing to respond to the request in the letter by advising the conservator whether any durable powers of attorney have been created affecting accounts at that bank.

**Changing the name of the owner of existing bank accounts and time deposits** You should change the ownership of bank accounts and time deposits that you discover in the conservatee's name to this name:

Conservatorship of [conservatee's name], [your name],  
Conservator of the Estate

It is important to use this name. Make this change as soon as possible.

Some banks will waive penalties for early withdrawal of time deposits to establish conservatorship accounts. If the institution won't waive the penalty, wait

until the deposit matures to withdraw funds or close the account. Change the name of the account's owner to the conservatorship, unless doing so would cause the account to lose interest. In any event, notify the bank of your appointment.

Each financial institution must advise the court that ownership of an existing account has been changed to show a conservatorship, or that a new account has been opened showing a conservatorship, and must provide other required information. This is done on a required Judicial Council form called *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safety Deposit Box*, form GC-051. A blank copy of this form is included in Appendix F at the back of this handbook. The bank should have its own supply of these forms and is responsible for preparing and filing them directly with the court. It is a good idea to ask the bank to send you a copy of the completed form when it sends the original to the court, although the law does not require the bank to do so.

**Conservatee's personal checking account** Some conservatees are capable of paying for everyday expenses such as utilities, food, rent, clothing, or other incidental expenses. If so, the judge may have approved an allowance for the conservatee. If the conservatee can manage a small checking account, you may want to keep one account open in the conservatee's name, into which you deposit the allowance payments. Have the bank send you all the statements and canceled checks on this account, so that you can see how the conservatee is spending the money and so that you can control the amount in the account. You must show approved allowance payments to the conservatee in your accounting, but you do not have to show the court what the conservatee did with the allowance payments.

**Accounts the conservatee owns with someone else** If you discover that any of the conservatee's accounts are owned with someone else—for example, as a **joint tenant**—do not remove funds from the account or remove the other person's name without checking with your lawyer. **L** In the meantime, let the bank know you have been appointed conservator and ask that no withdrawals be permitted from the account without your consent.

If the bank won't cooperate, contact your lawyer immediately. **L** You may need a court order to freeze the account while a judge decides the rights of the other person whose name is on the account.

If you withdraw funds, or if you remove the other person's name, you may be affecting the conservatee's intended estate plan. Some or all of the money remaining in such accounts is supposed to go to the other person named on the account if the conservatee dies first. You may also be affecting the other person's rights during the conservatee's lifetime, which will be especially

important if some of the money in the joint account originally belonged to the other person named on the account. **L**

**Accounts the conservatee owns with a designated beneficiary** If you discover that any of the conservatee's accounts have a **beneficiary**, or payee, named on the account, for example, a **Totten trust account** or a **Pay on Death (POD) account**, be sure to keep the beneficiary or payee designation when you change the account name to the conservatorship and to you as conservator. Otherwise, you may be seriously affecting the conservatee's estate plan. The money remaining in such accounts is supposed to go to the named beneficiary or payee when the conservatee dies. You should also be reluctant to withdraw money from these accounts without first talking to your lawyer, because if you withdraw money from one account and not from another, and each account has a different named beneficiary or payee, you will be affecting the conservatee's estate plan. Often a court order is needed to solve this problem. **L**

**Where to deposit money** You may deposit conservatorship funds in any California bank or any insured savings and loan or credit union. Don't put more money in any one institution than its Federal Deposit Insurance Corporation (FDIC) insurance limit (currently \$100,000).

**Checkbook records** Put all income in the conservatorship checking account and use it to pay expenses. Avoid making out checks to "Cash," except for petty cash or for a court-authorized allowance paid directly to the conservatee. Section 7(C) later in this chapter explains how to use checkbook records to prepare your reports to the court.

**Keeping the conservatee's money separate** Mixing the conservatee's money with your own can get you into serious trouble. For example, never deposit into your own bank account a check that is made out to the conservatee, even though it may seem convenient at the time. A judge may remove you as conservator and make you pay for any losses out of your own pocket if you can't account for all of the conservatee's money. It's even a good idea to set up the conservatorship bank accounts at a different bank than your own so even an unintended or accidental deposit into the wrong account is unlikely.

**CAUTION** None of the conservatee's money should ever go into your personal accounts, and none of your own money should ever go into any of the conservatee's accounts or into any account in your name as conservator.



## B. Safe Deposit Boxes

Banks will make you show a certified copy of your Letters before you may open the conservatee's safe deposit box to review the contents. When you first open the box, be sure to ask a bank employee to watch you and to sign a list of what you find there.

If you close the box or change title to it to show the name of the conservatorship, the bank must complete and file with the court the same form required for changes in bank accounts, Judicial Council form GC-051. This form requires the bank to describe the contents of the box. You should ask for a copy of the completed form the bank sends to the court.

If you can't find a safe deposit box key, the bank may have to arrange for a locksmith to come to the bank to drill the lock on the box so it may be opened to allow the bank to identify its contents for the court form or to inventory and deliver those contents to you. You should try to be present when that is done.

The bank will hire a locksmith to come to the bank to perform that service and will bill you for its cost. The bill may be paid from the conservatee's assets. However, you should write a check for this cost rather than permit the bank to withdraw the money from a conservatorship account opened at the bank. This will ensure that your record of expenditures is accurate and complete.

**If the conservatee rented the box with someone else** If the conservatee's safe deposit box is rented with someone else, ask that person to come with you when the box is opened. Separate the items in the box so that it contains only the conservatee's belongings. If there is a question or disagreement about who owns a particular item, leave it in the box and check with your lawyer. **L**

If you are going to keep the box for storing conservatorship property, you should change the name on the box, as you did with the bank accounts (see Section A earlier in this chapter), to this name:

Conservatorship of [conservatee's name], [your name],  
Conservator of the Estate

You should be the only one to have a key to the box. Not even the conservatee should have a key.

**If the conservatee doesn't have a box** If the conservatee doesn't already have a safe deposit box, think about renting one. If you rent a box in the name of the conservatorship, the bank must notify the court that you have done so and must tell the court what went into the box on the day it was rented.



**Never store the conservatee's assets in your own safe deposit box.**

**What to keep in the box** A safe deposit box is useful for keeping small but valuable objects, such as precious jewelry, stamp collections, and coin collections. If you are unsure about whether it is more important for the conservatee to have such an item rather than to have it stored in a safe deposit box, consult your lawyer. Remember that you may have to pay out of your own pocket for any loss of valuables. **L**

Important papers should also be kept in the box.

## **PAPERS TO KEEP IN A SAFE DEPOSIT BOX**

- The conservatee's will or other estate planning documents
- Stock certificates
- Bonds
- Real estate deeds
- Vehicle or vessel registration documents
- Promissory notes
- Insurance policies
- Birth, marriage, and death certificates
- The conservatee's passport
- Photographs of the conservatee's valuable personal belongings
- Any other papers that would be hard or impossible to replace

## **C. Stocks and Bonds**

Although the conservatee's stocks and bonds usually will be in a safe deposit box or with a broker, it is not uncommon to find certificates in the conservatee's home, so you should carefully look for them. You may also learn of stocks and bonds from brokers' statements, income tax returns, Internal Revenue Service (IRS) 1099 forms, and dividend checks.

**Lost certificates** If you find dividends reported on an income tax return, but you can't find a stock or bond certificate, write to the company and ask for a replacement certificate. Be sure to tell the company to send future dividends to you.

**Dividend reinvestments** If the conservatee owns the stock of a company that has a dividend reinvestment program, a plan under which cash dividends are not distributed but are instead used to buy more shares of the company's stock, immediately ask the company to give you a statement of the current number of shares owned by the conservatee. You may want to discontinue the reinvestment program because it is hard to keep track of reinvested dividends for your account to the court. Check with your lawyer if you're not sure what to do. **L**

**Changing ownership** Have the stocks or bonds reissued to this name:

Conservatorship of [conservatee's name], [your name],  
Conservator of the Estate

Use the conservatee's social security number on IRS Form W-9. See the sample letter that follows.

If any of the conservatee's stocks or bonds are held in a brokerage account by a stockbroker, you can change the record ownership of the brokerage account in the same way that you change ownership of bank accounts. The broker must complete and file Judicial Council form GC-050, *Notice of Taking Possession or Control of an Asset of Minor or Conservatee*, when you have changed the title to any brokerage account to show the conservatorship, or when you open a new account showing the conservatorship. A blank copy of this form is included in Appendix F at the back of this handbook. As with the similar form used by banks, it is a good idea to ask the broker to provide you with a copy of the completed form when the original is sent to the court.

If the conservatee owns a number of stocks or bonds that are publicly traded, you will find them easier to deal with by opening a brokerage account in your name as conservator and placing the conservatee's shares into the account. The broker will handle all aspects of the transfer procedure, the share certificates will be safe, the broker will receive cash dividends or bond interest and will either send them to you or place them into a money-market account attached to the brokerage account, and you will receive periodic statements showing the current value of the shares and all dividend activity. If you later sell any of the shares, the broker will handle all aspects of the transfer procedure.

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## SAMPLE LETTER FOR STOCKS AND BONDS

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P. O. Box 4392  
Yreka, CA 96067  
November 18, 2002

Retrodate Technology  
44 Sea Lake Way  
Mountain View, CA 94040

Attn: Stock Transfer Department

↓  
RE: Conservatorship of the Estate of Mary Jane Orr,  
also known as M. J. Orr

Shares of Stock in Retrodate Technology,  
Certificate Number 210008070940

Dear Transfer Agent:

Enclosed please find a certified copy of Letters of  
Conservatorship that verify that I have been appointed  
conservator of the estate of Mary Jane Orr.

Ms. Orr apparently owned the stock certificate identi-  
fied above. Please advise me of the number of shares  
she now owns and your requirements for transferring  
this stock to the conservatorship estate. Please for-  
ward all forms that must be completed. Please also send  
all future dividends to me.

Thank you for your assistance.

Sincerely,

Elaine MacArthur  
Conservator of the Estate  
of Mary Jane Orr

Enclosure: Certified copy of Letters of Conservatorship

*If the conservatee  
sometimes uses a  
variation on his or  
her name, such as  
a middle initial or  
maiden name,  
provide that  
information after  
"also known as."*

If, however, you discover that any of the conservatee's stocks, bonds, or mutual funds are owned with someone else or have another person named as beneficiary, be careful when changing ownership. Do not remove the co-owner or beneficiary without first checking with your lawyer. You should also check with your lawyer before selling these stocks or bonds or withdrawing from these mutual funds. You could be affecting the conservatee's estate plan or affecting the rights of the co-owner or beneficiary. For more information, see the discussion in Section 5(A) earlier in this chapter about bank accounts owned with someone else or having a designated beneficiary. **L**

## **D. Real Estate**

Real estate, including the conservatee's home, vacation homes, rental property, undeveloped land, and deeds of trust, should be left in the conservatee's name. Record a certified copy of your Letters with the county recorder in each California county where you think the conservatee owns real estate. See the sample letter to county recorders in Section 1(C) earlier in this chapter. Recording the Letters should prevent the conservatee from selling the real estate or giving it away to someone who doesn't know about the conservatorship. It also should stop any loans the conservatee, or anyone else improperly influencing or controlling the conservatee, tries to get using the property as collateral.

If the conservatee's property has a building on it, make sure the insurance is current. You should consider removing unsafe structures that may be a source of legal liability.

## **E. Cars and Other Vehicles**

Get the ownership certificates ("pink slips") of all the conservatee's cars and other vehicles such as boats, motorcycles, campers, and planes.

Transfer ownership to this name:

Conservatorship of [conservatee's name], [your name],  
Conservator of the Estate

Keep vehicles safely stored and control their use. No one should use the conservatee's car or other vehicle except for the conservatee's benefit, and only if it is adequately insured and the insurance covers all drivers. Even if vehicles are stored and not used, remember to keep them insured. Renew the registration for any vehicle that is driven.

Vehicles, especially cars, lose value over time, so consider selling any vehicle that will not be used in the foreseeable future.

## **F. Debts Owed to the Conservatee and Missing Assets**

Try to collect debts owed to the conservatee and try to get back assets that were taken from the conservatee wrongfully. If you are faced with either of these situations, speak with your lawyer to find out what can be done. **L**

## **G. Charge Accounts**

Try to eliminate ways the conservatee could get into debt. For this reason, it is generally not advisable for any conservatee to have a credit card or an ATM card.

In rare situations, you may want to leave a charge account open for the conservatee's use. If so, put dollar limits on the use of the account and exercise careful control over it.

Cancel credit cards and ATM machine cards that are open in the conservatee's name. Collect and destroy all of these cards except those, if any, that you decide the conservatee can keep and use. See the sample letter that follows.

# **6. Inventorying and Appraising the Estate**

As you locate the conservatee's property, make a list describing each item in detail. Use this list to help you prepare your Inventory and Appraisal.

See Appendix C at the back of this handbook for a sample Inventory and Appraisal. It is prepared on Judicial Council forms GC-040 and GC-041. Blank copies of these forms are also included in Appendix F.

The Inventory and Appraisal lists all of the assets owned by the conservatee on the date you were appointed and states their value on that date. The conservator lists the value of cash items such as bank accounts. The **probate referee** appraises all other items according to their fair market value. See Chapter 7, Section 1(C), for more information about the probate referee.

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## SAMPLE LETTER FOR CREDIT CARDS

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599 Tyler Avenue  
Los Angeles, CA 90004  
October 1, 2002

National Express Card Company  
P. O. Box 8823  
Wilmington, DE 19805

*If the conservatee  
sometimes uses a  
variation on his or  
her name, such as  
a middle initial or  
maiden name,  
provide that  
information after  
"also known as."*

RE: Conservatorship of the Estate of Kazuo Carl  
Nishikawa, also known as Kaz Nishikawa

Account No. 98-505-70-113

Dear National Express Card:

Please be advised that a conservatorship has been  
granted for the estate of Kazuo Carl Nishikawa.  
Enclosed please find a certified copy of Letters  
appointing me conservator of the estate. Please immedi-  
ately cancel this account and do not allow further  
charges to be made to it.

I have located and cut in half the credit cards for  
this account. The pieces are enclosed.

Please contact me if you have any questions.

Sincerely yours,

Suzanne Nishikawa  
Conservator of the Estate  
of Kazuo Carl Nishikawa

Enclosures:

Certified copy of Letters of Conservatorship  
Credit cards

## **A. When to File**

The Inventory and Appraisal must be filed with the court within 90 days after your appointment. To avoid being late, start the inventory well before the filing date so that the probate referee will have enough time to appraise the non-cash assets, complete the Inventory and Appraisal, and return it to you or to your lawyer for filing with the court.

Preparing an Inventory and Appraisal may not be a one-time obligation. Any time you discover assets owned by the conservatee when you were appointed but that you didn't know about until later, or you receive assets payable to the conservatee after your appointment (other than assets you obtain as a result of your own actions to invest and manage the estate, such as when you buy stocks or mutual funds with conservatorship funds), you must prepare and file a Supplemental Inventory and Appraisal describing these assets, in the same way you did the original Inventory and Appraisal, including appraisal by a probate referee if required. Assets shown in a Supplemental Inventory and Appraisal are valued as of the date you discovered or received them.

If you have collected assets and have prepared an Inventory and Appraisal, but you are close to the 90-day deadline because the referee is having difficulty completing the appraisal of some of the assets, you could prepare one or more Partial Inventories and Appraisals listing all of the cash assets and any other assets the referee can appraise in time to meet the deadline, to be followed later by a Final Inventory and Appraisal that includes the other assets. All of the partial inventories and the final inventory together must contain all of the conservatorship estate assets valued as of the date of your appointment.

If you sell estate real property more than one year after the date you were appointed conservator, you must obtain a probate referee's current appraisal of the property. This is called a Reappraisal for Sale, and is prepared on the same form and in the same manner as the initial inventory, except that the actual date of the reappraisal is identified on the form.

## **B. Why the Inventory and Appraisal Is Required**

Preparing the Inventory and Appraisal is an important task. The Inventory and Appraisal has several purposes:

- To help you and the judge estimate how much income may be available over the course of the conservatorship to cover the cost of meeting the conservatee's needs

- To let the judge and other interested people know how much the conservatorship estate is worth
- To provide a list of the property for which you are accountable
- To help the judge determine the amount of your bond

## C. Establishing the Value of Personal Belongings

It may be hard to establish the value of some personal belongings. With your inventory, give the probate referee your own informal opinion of how much items such as jewelry, coins, antiques, and artwork are worth. If you believe that these items have unusual value that isn't obvious—as with paintings or sculptures, for example—consider hiring a professional appraiser to value them. Send a copy of the appraiser's opinion to the probate referee with your inventory.

## D. Challenging the Probate Referee's Appraisal

The more detail you give the probate referee, the more likely it will be that the appraisal is correct. In your inventory, or in correspondence to the probate referee accompanying it, alert the referee to any facts about the conservatee's assets that may reduce their value. For example, let the referee know if the roof on the conservatee's home needs repair.

No matter how much information you provide, the referee's appraisal may not meet your expectations. You have the right to question the appraisal, and, if your concerns aren't resolved, you may file a **petition** in the conservatorship proceeding asking the judge to resolve the dispute. **L**

# 7. Managing and Protecting the Estate

You will need a judge's approval before you do certain things. If you are not sure whether you need court approval, check with your lawyer. **L** If you act without a judge's permission and a loss results, you may have to pay for the loss out of your own pocket.



## A. Storing and Protecting Assets

Store valuable furs, antiques, artwork, and excess furniture in an insured warehouse if the conservatee has no immediate need for them. For insurance purposes, take photographs of the conservatee's valuable personal belongings and household items and keep the photographs in the conservatorship safe deposit box. The conservatorship estate may pay the costs of storage and insurance.

### WAYS TO PROTECT THE CONSERVATEE'S VALUABLE POSSESSIONS

- Remove valuables such as silver, art, jewelry, and furs from the house unless the conservatee wants to keep them at home.
- If the conservatee wants to wear jewelry, substitute less expensive jewelry. For example, if the conservatee wants to wear expensive pearls on a regular basis, substitute costume jewelry.
- If the conservatee insists on wearing valuable jewelry, alert the conservatee's relatives, friends, and lawyer that you are allowing the conservatee to wear his or her jewelry.
- Take an inventory of all valuables that remain in the home and photograph them. Keep this information in the conservatorship safe deposit box. Let everyone who comes into the house know that an inventory has been taken.
- Go through the house annually to check the inventory.
- Put locks on valuables when you can—for example, on china closets or closets in which valuables such as silver or jewelry are stored.
- Insure valuables; these can be added to homeowners' or tenants' policies. List and describe these items individually. Consider taking this step no matter who is in possession of these items.
- Engrave identification numbers on the television and on stereo equipment. You might use the conservatee's social security number. Be sure to let everyone know that these items are marked.
- If you hire an **aide** directly or through an agency, be sure to check references.
- If you hire an aide through an agency, make sure the agency screens, bonds, and insures its employees.

## **B. Preparing a Budget**

In preparing the budget, your primary concern is to arrange for care and comfort that the conservatee can afford. Plan the budget with the conservator of the person and, if possible, with the conservatee. The budget should include estimates of expenses and income from all sources and take into consideration free or low-cost services available from community agencies.

The budget will be an important part of your overall plan for the conservatorship. See Chapter 6 for information about your plan.

## **C. Setting Up and Keeping Good Records**

If you have access to a computer, the best way to keep records of the conservatorship checking account and other estate investments is with a personal-finance computer program such as Quicken®. The program will help you track all of the information you need about income and disbursements. It can be tailored to fit your exact requirements. For example, if you want to keep track of expenditures by category, you can easily set up the program to do that. You can keep track of income receipts associated with the properties that generated them, such as stock dividends from each company and rental income from each parcel of real property or from each rental unit of a single property. You can also buy checks that the program will print as needed. This feature is particularly helpful because the program requires you to enter information about each expenditure into your records when you write each check. You should also be able to use the program to prepare at least some of the schedules to be attached to your accounting. See Section 8 later in this chapter and Appendix D, a sample account and report. Be sure to save copies of your estate records on separate floppy or Zip® disks, not just on the computer's hard drive.

If you don't have a computer, the check register for the conservatorship checking account is your indispensable tool for keeping track of income and expenditures. The large type of register, called an executive or deskmaster register, is the best. It allows plenty of room for complete and detailed entries, particularly of deposits. The check register sample that follows was taken from a deskmaster register.

This type of register is offered with the desktop type of checkbook, which has three or more checks on each page. It's less convenient to carry around than a pocket or purse checkbook, but you will be glad you chose the desktop model when you or your lawyer prepare your accounting for the court.

For the check register to give you the most help when your accounting is prepared, it must be a complete record of all estate cash receipts and disbursements. ***You should deposit all income into the conservatorship checking account first***, even if you immediately write a check for the entire deposit to one of the other accounts, such as a savings or money market account. Clearly identify the source of each deposit in the check register. ***You should also make all expenditures by check from the checking account***, for the same reason. The important thing is to try to keep a complete record in one place of all receipts and expenditures of the conservatee's money.

If you can, arrange with the bank where the conservatorship checking and savings accounts are held to pay savings account interest into the checking account. Check the account statements frequently and add the amount of interest paid in from the savings account as a deposit in the checkbook register.

**Cash** Courts do not approve cash expenditures by conservators that do not show how the money was spent. For generic items such as groceries, write a check rather than spend cash. When you must use cash, keep a detailed receipt of each cash expenditure in case a judge or someone interested in the estate questions you about it later.

You can buy petty cash receipts in tear-off pads in any office supply store. Keep a pad of these with you at all times, fill one out for each cash expenditure, and attach the store's invoice or cash register receipt to it. Fully describe what was bought on each receipt if the store's invoice or cash register receipt doesn't say.

Keep only small amounts of cash on hand as needed for small day-to-day expenses, and keep it separate from your own cash. You may set up a petty cash system with a fairly low ceiling, say, \$50. Save the receipts for cash expenditures for a month, or for some other, shorter period, or until the total of the receipts approaches the ceiling. Replenish the petty cash fund by a check payable to "Cash" for the total amount of your receipts, so the total fund is restored to the ceiling amount. You should make a notation on the check and in the check register that the check is for replenishment of petty cash. Your accounting would show the actual expenditures of cash shown on the receipts, not the replenishment checks.

If you can afford it, it's better to pay all cash sums from your own pocket and then to reimburse yourself by check from the estate. You must still keep the detailed records described above. When you list the check in the schedule of **disbursements**, or payments, in your accounting, you should show yourself as the payee, describe the check as a reimbursement, and list the expenditures for which the check is reimbursement. See examples of reimbursement checks to the conservator and to the lawyer for the conservator in Schedule C of the sample account and report in Appendix D, at the back of this handbook.

If you believe that your conservatee can handle small amounts of cash for personal expenses, you can ask the court for permission to pay a monthly allowance directly to him or her. You may then write a check for cash in the allowance amount each month, give the cash to the conservatee, and enter the check in your records as an allowance payment. You will then be excused from accounting further for this sum. You should try to find out how the conservatee spends the money, however, in case you need to make adjustments later, and you should keep the allowance amount modest. Don't give the conservatee cash unless you have received court permission to pay an allowance.

**Income** Record all income paid to the conservatee, including the date it was received, the amount, and its source. If it isn't too hard to do, photocopy every incoming check.

**Expenditures** For every check you write on the conservatorship account, write down the date, to whom it was paid, and what it was for. Keep receipts for all purchases in chronological order, and write the check number and the date paid on each receipt.

Your record of income and expenditures should look like this:

PLEASE BE SURE TO DEDUCT ANY PER CHECK CHARGES OR SERVICE CHARGES THAT MAY APPLY TO YOUR ACCOUNT										
CHECK NO.	DATE	CHECKS ISSUED TO OR DESCRIPTION OF DEPOSIT	(-) AMOUNT OF CHECK		✓	(-) CK FEE	(+ ) AMOUNT OF DEPOSIT		BALANCE	
									229	73
-	4/1	Social Security (April)					540	00	769	73
401	4/2	Pacific Bell for 3/02	26	00					743	73
-	4/3	Hamilton Federal Bank Interest (1st Quarter)					85	90	829	63
402	4/3	Ben Casey, MD (3/15) Office Visit - earache	53	00					776	63
-	4/5	Rental Income 110 Church Street #A (Mar.)					995	00	1,771	63
-	4/5	Rental Income 110 Church Street #B (Mar.)					875	00	2,646	63
403	4/7	Millard Fillmore Savings Mortgage Payment (4/02)	850	00					1,796	63
-	4/8	ABC Mfg. Co. Pension (Feb.)					320	00	2,116	63
404	4/9	Clerk of Superior Court - Certified Letters	4	00					2,112	63
405	4/10	Cash to housekeeper for misc. personal ex. (3/02)	20	00					2,092	63
-	4/11	Medicare Reimbursement for Ben Casey, MD (2/5 visit)					41	00	2,113	63

**The importance of keeping complete records** If you follow the record-keeping tips in this handbook, it will be easier for you and your lawyer to prepare reports required by the court. *The importance of keeping complete records can't be overstated.* Conservators often regret not setting up an adequate record-keeping system from the start, because trying to piece together the information later from memory and old bank statements is difficult and time consuming, and it may be expensive as well. The court has the authority to make you pay for this added expense out of your own pocket.

**Transactions involving key assets** You may be asked by a judge to explain transactions that involve key estate assets. Be prepared by keeping accurate records and keeping all documents related to transactions involving the following:

- Stock or bonds owned by the conservatee

**Transactions involving stocks and bonds** Keep track of all cash dividends or bond interest, stock dividends, and stock splits and make sure that you make note of any automatic cash dividend reinvestments. These transactions often don't show up in your check register and therefore are easy to overlook.

If the estate includes stock of a number of publicly traded companies, or a large number of shares of one or two public companies, you should consider opening a stock brokerage account in your name as conservator and depositing the stock into the account. The broker's regular account statements will help you when you prepare your account and report.

- Rentals of property owned by the conservatee
- Sales of the conservatee's real estate and personal property
- Insurance claims that have been paid
- Debt repayments—write down the interest rate and list the security for the debt

## D. Monitoring the Conservatee's Actions

As conservator, you are responsible for knowing what your conservatee is doing or wants to do about financial or property matters, and whether anyone is trying to influence or pressure him or her. If you think that the conservatee

is doing things that might damage him or her financially, or that you might have to fix later, check with your lawyer right away. **L** You are the person who is ultimately responsible for the conservatee's finances.

## **E. Monitoring the Conservatee's Assets That Are Controlled by Others**

Sometimes some of the conservatee's property may be controlled by another person or institution—for example, a husband, wife, or trustee. As conservator, you must know how this property is being invested and used for the conservatee. If you have questions or concerns, ask this other person or institution. If you still aren't satisfied, bring your concerns to the attention of a judge with your lawyer's help. **L** Section 7(M) later in this chapter has more information about trusts.

## **F. Managing Investments and Retirement Plans**

When you invest the conservatee's money and make decisions about his or her retirement plans, you are held to a higher standard of careful conduct than when you invest your own money or decide about your own retirement.

**Making investments** As conservator, you are expected to invest prudently and to protect estate assets. This means avoiding risky investments, but planning for reasonable growth, usually with a variety of investments.

Review the conservatee's existing investments to see whether they are still appropriate for his or her age, life expectancy, income requirements, and financial resources. Discuss any changes with the conservatee if this is possible. You should also discuss your investment plans with your lawyer, tax advisor, and stockbroker before taking action. Be sure to include in these discussions any plans to sell estate assets, whether you plan to reinvest the money from the sale or have some other purpose. There can be serious income tax consequences, for example, when you sell an asset the conservatee has owned for a long time. See also the discussion about selling assets in Section 7(G) later in this chapter. **L**

Automatic reinvestment of cash dividends is allowed, but this sort of transaction is difficult to keep track of for purposes of your accounting to the court. (See Section 8 later in this chapter and Appendix D for more on your account and report.)

**Handling retirement plans** Many conservatees have one or more pension plans, Individual Retirement Accounts (IRAs), or other retirement plans, such as a 401(k) plan, a Keogh plan, or a plan for **deferred compensation**.

You will need to determine the conservatee's rights and benefits under any plan. You should discuss such plans with your lawyer, especially if money is not already being withdrawn or distributed from a plan on a regular basis. It is your duty to take any action necessary to protect the conservatee's interests in such plans, taking into account his or her financial needs and the tax consequences of withdrawals or distributions. **L**

If the conservatee is already withdrawing money or receiving distributions from a retirement plan, check with the plan administrator to find out about any rights the conservatee has under the plan. Indeed, you should do this even if the conservatee is not yet withdrawing or receiving money from a plan. You will still need to determine the conservatee's future rights under it. For example, when the conservatee reaches a certain age, certain elections may have to be made, or a minimum withdrawal or distribution may be required.

## **G. Selling or Borrowing against Estate Assets**

You may need to sell estate assets if, for example, there isn't enough money to support the conservatee, or an unused car is losing its value. You may need a judge's approval to sell or borrow against certain assets, so check with your lawyer before you act. **L**

Selling the conservatee's assets or using them to borrow money for the conservatee's living expenses can have consequences in a number of areas:

- The conservatee's current or future eligibility for public assistance programs such as SSI, Medi-Cal, and In-home Supportive Services may be affected by receipt of the proceeds of a sale or loan, or by increased income earned on those proceeds when they are reinvested.
- There may be income tax consequences, such as a large capital gains tax.
- There may be less property for the conservatee's heirs.

Think these consequences through carefully and get the advice of your lawyer, your tax advisor, and any involved public assistance agencies. **L**

**Selling the conservatee's home or former home** Because selling the conservatee's home will have an enormous effect on the conservatee, you must explore all other alternatives first. If no other solution can be found, you must obtain special court permission for the sale. A judge will not allow you to sell the conservatee's home unless you have discussed the proposed sale with the conservatee and have told the judge what the conservatee wants. The court



may send a court investigator to interview the conservatee to be sure the conservatee knows about the sale and to find out what he or she wants. If the conservatee does not want the home sold, the court may appoint a lawyer, at conservatorship estate expense, to represent the conservatee at the time you request court authority for the sale.

**Alternatives to giving up the conservatee's home** When the conservatee is low on cash, there are several ways to use the conservatee's home to get money to pay for in-home care and other things the conservatee needs to stay at home. Each of these methods has advantages and disadvantages. You will need a judge's approval before taking any action. Ask your lawyer and your tax advisor about these alternatives:

- **Sale of a remainder interest** The home is sold to a new owner. The conservatee is allowed to live in the home for the rest of his or her life. Often the buyer and seller will agree that the conservatee's estate will be responsible for upkeep. The selling price will be less than it would be if the conservatee's entire interest in the property was sold because the conservatee becomes a "free tenant," and the new owner has to wait to use the property.
- **Sale with leaseback** The home is sold for its full value, and the conservatee becomes a rent-paying tenant.
- **Rental** Sometimes it makes more financial sense to retain the conservatee's home and rent it out rather than sell it. That is especially true if the conservatee has owned the home for a long time. The sale of the home in that situation may incur a large capital gains tax. See also Section 7(K) later in this chapter for information about managing rental property.
- **Home equity loan** If the conservatee qualifies, a home equity loan will provide a lump sum of cash. The estate will then have to make monthly loan repayments. If the value of the home increases, it can be sold for full market value at a later date.
- **Reverse-annuity mortgage (RAM)** In many respects a RAM is the reverse of a regular mortgage. With a RAM, the lender gives the conservatee monthly loan installments. At the end of the loan, often when the conservatee dies, the debt usually is repaid by selling the home. The size of the monthly installments depends on the value of the home, the loan's interest rate, the length of the loan, and the loan's closing costs and related expenses.



For more information on these alternatives, read a free publication called *Home-Made Money: Consumer's Guide to Home Equity Conversion*, published by the American Association of Retired Persons, listed in Appendix E, "Suggested Readings for Conservators," at the back of this handbook.

**Conservatorship sale requirements** Once you have decided to sell some of the conservatee's property, and after you have obtained permission from the court if that is required, you must follow detailed and often complicated rules and procedures to complete the sale. These vary depending on the type of property sold and the reasons for its sale, but the following are highlights:

- The sale must be for a purpose authorized under the law. The authorized purposes are
  - Sales that are necessary because the estate's income is insufficient for the comfortable support and maintenance of the conservatee
  - Sales that are necessary to pay some (but not all) of the conservatee's debts
  - Sales that are for the advantage, benefit, and best interests of the conservatee or his or her estate
- For some sales that take place more than a year after your appointment, you must prepare a Reappraisal for Sale, using the same forms you used for the Inventory and Appraisal. You then must get the probate referee's appraisal of the property's current value and file the reappraisal with the court.
- To sell some kinds of personal property and all real property, you must post a notice of intent to sell in the courthouse and publish the notice in a newspaper.
- The terms of sale may be for all cash or part cash and part deferred payments, subject to approval of the court and subject to requirements for the security received by the conservatorship estate for the deferred payments.
- Most sales of real property, and personal property sold with it as a unit, must be confirmed by the court. This is a form of court approval after the conservator has agreed to sell the property to a specific buyer on agreed terms. The order confirming sale follows a hearing at which interested buyers other than the original buyer may appear and bid on the property. The court actually conducts an auction at the hearing. The order confirming sale is in addition to any required prior court

approval for the sale. Once a sale has been confirmed by the court, its propriety and terms cannot be questioned.

The petition for confirmation of sale and the order confirming sale are Judicial Council forms GC-060, *Report of Sale and Petition for Order Confirming Sale of Real Property*, and GC-065, *Order Confirming Sale of Real Property*. Blank copies of these forms are included in Appendix F, at the back of this handbook.

- Stocks or bonds that are listed on established exchanges or traded in the over-the-counter market may be sold without prior court approval or subsequent confirmation. However, such sales are subject to review and may be questioned at the time of the next account and report.
- Stocks or bonds that are not eligible for sale under the previous paragraph, and personal property, such as an unused car, that is depreciating in value or would incur loss or expense if kept, may be sold with prior court approval. However, that approval can be obtained immediately on application, without a fully noticed hearing. That kind of application is called *ex parte*, meaning without notice to other parties. The applications and orders authorizing the sale are Judicial Council forms GC-070, *Ex Parte Petition for Authority to Sell Securities and Order*, and GC-075, *Ex Parte Petition for Approval of Sale of Personal Property and Order*. Blank copies of these forms are included in Appendix F, at the back of this handbook.

In addition to court approval and other requirements, the sale of a conservatee's property may require unique language in agreements with real estate brokers, escrow companies, buyers, and others. All parties should be aware of the specific requirements of these sales. Try to deal with real estate brokers and others who have prior experience with them. You should also consult closely with your lawyer concerning all aspects of a sale of any of your conservatee's property.

**CAUTION** Selling or borrowing against estate assets can affect a conservatee's eligibility for SSI, Medi-Cal, In-home Supportive Services, and other public assistance programs. Check with these public assistance agencies to find out how additional cash proceeds of a sale or loan, or additional income earned on the proceeds, might affect the conservatee's eligibility.

## H. Securing Adequate Health, Life, and Property Insurance

Check with the conservatee's insurance agent to see whether the conservatee and his or her property are adequately insured. If the conservatee doesn't have enough, or the right kind of, insurance, decide what's needed and arrange to buy it.

Pay any past-due premiums right away to avoid a lapse of coverage.

If the conservatee has duplicate or unnecessary insurance policies (which often happens when a confused person responds to television or newspaper ads), discuss them with your lawyer and the conservator of the person to decide which policies, if any, should be canceled. **L**

**Health insurance** Adequate health insurance for the conservatee is very important. You and the conservator of the person should figure out what care the conservatee will need so that appropriate health insurance is obtained. The conservatee may need supplemental Medicare insurance, for example. However, don't cancel an existing policy that provides coverage until you have completed arrangements for alternative coverage.

See Chapter 4, Section 3(A), for more information about health insurance. See also Appendix A, "Guide to Medicare, Medi-Cal, and Other Health Insurance," at the back of this handbook.

**Life insurance** Review the conservatee's life insurance policies. Before you change the amount of coverage or the beneficiary or borrow against the policy, ask your lawyer whether court approval is needed. **L**

You must have court approval to change the beneficiary of an insurance policy, even when the beneficiary is deceased.

**Employer's liability insurance and workers' compensation** If the conservatee or conservatorship estate employs anyone, for example, an aide, housecleaner, gardener, driver, handyman, or other service provider, make sure that there is proper worker's compensation insurance protection in case the employee is injured on the job. Do not assume that this will be covered under the conservatee's homeowner's insurance. If the employee comes from an agency or registry, do not assume that the agency or registry is providing the necessary coverage. It is your responsibility to verify that there is proper coverage.

**Property insurance** If the conservatee owns a building, make sure that it has enough fire and public liability insurance. Cars driven by the conservatee or the conservatee's spouse must be insured. Cars, real estate, and household belongings should be insured for their replacement value against fire, theft, and other hazards and against harm to third parties. Include coverage for work-related injuries of household help. You don't need a judge's approval to take out these types of policies.

If the conservatee owns a vacant building, verify with the conservatee's insurance broker, if known to you, or if not, with an agent for the insurance company identified in an insurance policy that concerns the vacant property, that there is insurance coverage in place for the property. Try to get any representations that there is existing coverage in writing.

If there is no existing coverage, check with the broker or agent, or your own insurance broker or agent, to see if insurance coverage is available for the property. You may find it impossible to get insurance for a vacant building, particularly if it is in a dilapidated condition. In that event, you may have to demolish the building or sell the property quickly. You should consult closely with your lawyer when there is a vacant building in the conservatorship estate. **L**

## I. Paying Taxes

You are responsible for filing income tax returns for the conservatee. File tax returns for the conservatee on federal Form 1040 and California Form 540. You may hire a tax preparer to help. Make sure that real estate taxes, personal property taxes, gift taxes, and employment taxes are paid on time. The "Checklist for Hiring and Paying an Aide," in Section 7(J) later in this chapter, discusses employment taxes for aides.

If you can't find a copy of the conservatee's past two federal and state tax returns, write to the Internal Revenue Service and the California Franchise Tax Board to request copies and to find out if all returns have been filed. See the sample letter that follows.

You may request copies of federal income tax returns by completing and delivering IRS Form 4506, *Request for Copy or Transcript of Tax Form*.

You must also notify the IRS that you are the person now responsible for tax filing and payment on behalf of the conservatee. You may use IRS Form 56 for this purpose.

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## SAMPLE LETTER FOR TAX RETURNS

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2451 Folsom  
Oakland, CA 94619  
January 8, 2002

Internal Revenue Service  
Fresno, CA 93888

—or—

Franchise Tax Board  
Sacramento, CA 94267-0031

↓  
RE: Conservatorship of the Estate of Edna Mae  
Washington, also known as Edna Mae Johnson

Conservatee's social security number: 111-22-3333

Dear Conservatorship Coordinator:

I have been appointed conservator of the estate of Edna Mae Washington. A copy of my Letters of Conservatorship is enclosed.

Please send all future correspondence concerning the conservatee to me at the above address. Also please send me a copy of the last two income tax returns that were filed by the conservatee, or a copy of any form necessary to obtain these returns.

Thank you.

Truly yours,

Earl Washington  
Conservator of the Estate  
of Edna Mae Washington

Enclosure: Certified copy of Letters of Conservatorship

*If the conservatee sometimes uses a variation on his or her name, such as a middle initial or maiden name, provide that information after "also known as."*

## **J. Hiring and Paying Aides for the Conservatee**

If you or the conservator of the person have employed an aide for the conservatee, you are responsible for paying the aide; paying payroll taxes such as social security, Medicare, and unemployment; filing tax reports; and obtaining workers' compensation insurance. If you hire an aide through an agency, you will be spared most of these duties.

See the "Checklist for Hiring and Paying an Aide" that follows.

For more information on in-home aides, see Chapter 4, Section 7(C).

### **KEEPING GOOD EMPLOYMENT RECORDS**

Keep these records for at least four years:

- Your employer identification number
- The amounts and dates of all wage payments
- The value of noncash compensation such as meals or lodging
- The aide's name, address, social security number, and a forwarding address
- Copies of all W-4 forms
- The amounts and dates of tax deposits you have made
- Copies of all employment tax returns you have filed
- The dates of employment for each aide
- The reason for an aide's termination (If you fire an aide, be sure to record the reasons.)
- Detailed records of the aide's job-related illnesses or injuries

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## CHECKLIST FOR HIRING AND PAYING AN AIDE

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Done?

- ☐ **Check the aide's U.S. residency document.**

You must ask all new employees to give you Immigration and Naturalization Service (INS) Form I-9. The purpose of this completed form is to prove that the aide is a legal U.S. resident or citizen. If you hire someone without getting this form, you could be fined as much as \$10,000.

If you need more information, contact the nearest INS office to request INS Booklet M-274, *Handbook for Employers*.

- ☐ **Obtain workers' compensation insurance.**

Anyone who works in the conservatee's home must be covered for injuries that take place on the job. You can usually get workers' compensation coverage from the conservatee's homeowner's or renter's insurance company for an additional premium.

- ☐ **Follow federal and state wage and hour rules.**

- ☐ **Pay or withhold employment taxes.**

You may be responsible for several employment taxes. These taxes are based on the aide's taxable wages. Wages may include meals, lodging, health insurance, and other items provided by you as employer, unless they are for your convenience and are not compensation.

For help employed in the home, federal and state income taxes need not be withheld unless you and the aide agree to withhold them. Possible withholding taxes are as follows:

### **1. Federal income tax**

If you and the aide agree that you should do so, withhold federal income tax. Use the current year's Internal Revenue Service (IRS) Publication 15 to calculate this tax.

### **2. California income tax**

If you and the aide agree that you should do so, withhold state income tax. Use the current year's Employment Development Department (EDD) Publication 44 to calculate this tax.

## CHECKLIST FOR HIRING AND PAYING AN AIDE

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### Done?

#### **3. Social security and Medicare**

The conservatorship estate must pay half of this tax; the other half is withheld from the aide's wages. Use the tables in the current year's IRS Publication 15.

#### **4. California disability insurance fund**

Use EDD Publication 44 or 4525 to figure this withholding tax.

#### **5. State and federal unemployment insurance**

The conservatorship estate, and not the employee, pays these unemployment insurance taxes.

☐

#### **Get a federal employer identification number.**

You can obtain Form SS-4, *Application for Employer Identification Number*, from the nearest IRS office.

☐

#### **Have the aide complete federal tax Form W-4.**

If you and the aide agree to withhold income taxes, the W-4 form gives you the information you need to know how much tax to withhold from the aide's pay. If the aide hasn't given you a completed W-4 form by the time you first pay him or her, and the two of you have agreed that you will withhold federal and state income taxes, you must withhold the maximum tax (single with no withholding allowances).

☐

#### **Register with the California Employment Development Department.**

You can obtain Form DE-1 from an EDD office. This form must be filed within 15 days of employing and paying a household worker wages of \$750 or more in any calendar quarter.

☐

#### **File tax reports.**

☐

#### **Deposit withheld taxes with the appropriate agency.**

At set times, you must deposit withheld state and federal income taxes and social security, Medicare, and disability insurance taxes with the state and federal governments. Check with the IRS or the EDD to find out when payments are due.

☐

#### **File a summary of employment taxes paid.**

By April 30, July 31, October 31, and January 31, you must file a sum-



mary of state and federal employment taxes that you have paid to the government in a calendar quarter. Use Form 941SS for federal taxes and Form DE-3BHWX for California taxes.

You must file every quarter, even if you didn't employ anyone for a particular quarter. There may be a penalty if you don't file. If you stop employing aides, write "FINAL RETURN" on the top of your last quarterly return.

☐

**Give the aide a W-2 form.**

You must give the aide a federal Form W-2 by the end of January of each year. Send a copy of the W-2 form to the Social Security Administration by the last day of February.

☐

**Report unemployment tax.**

Mail federal unemployment insurance tax returns on Form 940 for the previous year by January 31. File California unemployment insurance tax returns quarterly on Form DE-3HWX.

You might want to consider hiring a payroll services firm to handle some or all of this employment paperwork.

**Online forms and publications** Many tax forms, tax publications, and other agency forms or publications may be obtained through Internet sites maintained by the agency.

**IRS:** *www.irs.gov* (or telephone [800] 829-1040)

**Franchise Tax Board:** *www.ftb.ca.gov* (or telephone [800] 852-5711)

**INS:** *www.ins.usdoj.gov* (or telephone [800] 375-5283)

## K. Managing Real Property

The most challenging task for a conservator of an estate that includes real property is to manage property that is or will be occupied by residential or business tenants. There are also other difficult issues that may affect estate real property whether or not it is leased or rented.

**Rental property** The estate may contain property that is being rented or should be prepared for rental. Perhaps you have decided to lease or rent the conservatee's home rather than sell it, or the conservatee already owns rental property. As conservator, you now have all of the legal responsibilities of a landlord regarding this property. Whether the property is small or large, you must comply with all of the laws regulating the rental of property.

Property management can be very complicated. There is a risk of loss to the estate if you do not handle it properly. If the estate has, or plans to have, rental property, you should discuss the situation fully with your lawyer to make sure you have the necessary information and advice. One of the things you and your lawyer will want to consider is whether you should hire a professional property management firm to manage the rental property. See the discussion that follows. **L**

Some of your responsibilities relating to rental property are

- Making sure that you have proper leases or rental agreements with all new tenants
- Reviewing existing leases or rental agreements, or obtaining new written agreements if the conservatee did not do so
- Making sure that the conservatee has set aside all legally required tenant deposits in a separate account
- Making sure that the property is safe and in compliance with all fire, building, and safety codes (see also following discussion on disposal of toxic waste.)
- Making sure that there is proper and sufficient fire and liability insurance covering the property *as rental property* (especially when converting the conservatee's home to rental property for the first time)
- Collecting all rents due to the conservatee, and taking necessary actions against all nonpaying tenants

- Paying all expenses of the property, such as insurance, property tax, mortgage, gardening, repairs, and utilities if the tenant does not pay them
- Keeping clear records of all rental property income and expenses, for use when the conservatee's tax returns and your accounting are prepared
- Respecting tenants' legal rights
- Learning about and complying with all local rent control ordinances or regulations

Owners of large residential rental properties often hire professional property managers to handle these tasks. Unless you are an experienced property manager, live near all of the conservatee's properties, and have the time to devote to property management, you should seriously consider using a property manager for residential rental property of any size, and for any leased or rented commercial or industrial property.

If you hire or retain a property manager, remember that you as the conservator are still the person responsible for supervising the manager's activities, making sure that all of the necessary work is done properly, and that the manager gives you clear, complete, and correct reports.

**Megan's Law requirements** Megan's Law requires registration of the names and area of residence of known sex offenders against children. Anyone who sells or rents out any real property must disclose to buyers or renters that they can look up this information at local police stations. You need to check to see that the sale or rental listing form you are using contains information about this law.

**Property containing toxic waste or causing pollution** Property owned by the conservatee may contain toxic waste or materials. There are very strict laws, federal, state, and local, about how such materials must be handled and about pollution generally. Violating any of these laws can result in prosecution or large fines. Payment for fines could come out of your own pocket if a court determines that you did not act properly in observing these laws as conservator.

It is important for you to learn how property has been used or is currently used and to determine whether it may contain toxic materials or whether it is causing pollution. If there is any risk that toxic materials may affect estate property, check with your lawyer to find out how to comply with the law and protect both the estate and yourself. **L**

Toxic materials and pollution may include the following:

- **Residential property** Old paint, household or garden chemicals, pest poisons, waste motor oil, used batteries, automotive chemicals, and asbestos
- **Commercial or undeveloped property** Chemical waste, medical waste, underground fuel or chemical tanks, water or air pollution, improper dumping, and improper sewage disposal

**Vacant property** If the conservatorship estate owns vacant houses, buildings, or land, it is your responsibility to make sure that the property is properly insured, fenced, or otherwise secured, and kept clean and in compliance with all local fire and safety laws. If you can't do these things, you may have to sell the property. See Section 7(H) earlier in this chapter for information on insurance for vacant property. Consult your lawyer about how to handle vacant real property of any kind. **L**

## L. Conservatee's Will

A will is an important and very private document. If you find the original or a copy of the conservatee's will, store it in the safest possible place, such as in the conservatorship safe deposit box or with your lawyer, particularly if he or she has an office safe. Keep all wills you find—not just the latest one, the one you think is the “fairest,” or the one you think the conservatee really wants.

**CAUTION** California recognizes handwritten wills. They don't have to be witnessed or follow any particular format. What you think is merely a note, a memo, or an unmailed letter may be a legally valid will. Check with your lawyer if there is any possibility that a handwritten document you find might be a will. **L**

Do not talk about any of the conservatee's wills with anyone but the conservatee and your lawyer. Make sure that you discuss the conservatee's wills with your lawyer. **L**

You may find that the conservatee already has given his or her will to a lawyer for safekeeping. If you need to know what is in the will and the lawyer won't tell you, ask your own lawyer what to do. **L**

The will may contain information you need such as the following:

- The name of the **executor**.
- The conservatee's request for specific funeral or burial arrangements and who is supposed to make them.
- Whether the conservatee wants to leave someone a specific piece of real or personal property. You need to know this if you are planning to sell or make a gift of any property so you won't sell the property left to someone in the will or give that property to someone else.

The conservatee does not lose the legal right to make a new will or to amend an existing will because of the conservatorship. However, whether any change in a will made by a conservatee is effective will depend on the conservatee's mental competence at the time the change is made. The fact that a conservatorship is in place will be a factor in resolving that issue.

If the conservatee asks you to help him or her change a will or prepare a new one, contact your lawyer for advice about what to do. **L** If the conservatee has a court-appointed lawyer, let him or her know as well.

If you believe that the conservatee's proposed change is appropriate but his or her mental competence is likely to be questioned by someone adversely affected by the change, you may request the court to authorize you to sign a new will or an amendment to an existing will on behalf of the conservatee. This kind of request is known as a **substituted judgment petition**. Such petitions are made in a wide variety of situations. However, they can be very complex and are often difficult to prepare. You should not try to prepare and file a substituted judgment petition without a lawyer. **L**

## **M. Trusts**

The conservatee may be involved in a trust that contains some or all of his or her assets, or that pays money or distributes property to him or her. It is your responsibility to protect all trusts that concern the conservatee. Trust papers should be kept in a safe deposit box. Trusts should be kept confidential—discuss them only with your lawyer, and, if your lawyer recommends, with the trustee. **L**

Look carefully at any trust that affects the conservatee, especially one that the conservatee set up. Contact the trustee identified in the trust documents and your lawyer. **L** Ask yourself these questions:

- Did the conservatee understand what he or she was doing when the trust was set up, when it was amended, or when he or she transferred property to the trustee?
- Is the trustee administering the trust and its property in the manner called for in the trust documents?
- Is the trustee acting in the conservatee's best interests?

If the answer to any of these questions is no, get your lawyer's advice about what to do. In any event, stay informed about what the trustee is doing. **L**

If the trust documents give the conservatee powers over the trust or over property held by the trustee, such as the power to modify or to revoke the trust or the power to designate who receives trust property (a **power of appointment**), you may ask the court for authority to exercise the power. This request would be another example of a substituted judgment petition, discussed in Section 7(L) earlier in this chapter. **L**

Sometimes the court will authorize a conservator to establish a new trust for the benefit of the conservatee and others and to transfer some or all of the conservatee's property to the trustee of the trust. This is often a better way of creating an estate plan for the conservatee than signing a new will and is one of the more common uses of the substituted judgment petition. **L**

## N. Making Funeral and Burial Arrangements

When you look for assets and important papers, try to find out what arrangements, if any, have been made for funeral services, burial, or cremation. Documents describing these arrangements are often found in the conservatee's home or in a safe deposit box. These arrangements may be mentioned in the conservatee's will or in a document known as a **power of attorney for health care**. You also may find a funeral or burial prepayment receipt or insurance policy.

If the conservatee had a spouse or other close family member who recently died, ask the funeral home or cemetery that handled those arrangements whether the conservatee has made funeral arrangements. The death certificates of deceased family members usually note the name of the funeral home and cemetery.

Ask the funeral home if the conservatee has signed all the necessary papers, such as a cremation authorization. Some documents may be signed only by the conservatee or his or her next of kin.

If your research doesn't turn up anything, ask the conservatee what he or she prefers, if the conservatee is able to discuss it comfortably and clearly. If you can't discuss this with the conservatee, plan what you will do when the conservatee dies.

If the conservatee's will says that the executor should make funeral or burial arrangements, contact him or her as soon as you learn of the conservatee's death. If there is a person with authority to act concerning these arrangements under a power of attorney for health care, contact him or her as soon as you can. If the conservatee is in a **care facility**, its business office will ask you for the name of the funeral home. In any case, don't leave the conservatee's funeral or burial arrangements until the last minute.

## 8. Reporting and Accounting to the Court

Even if you read nothing else in this handbook, you should read and consider very carefully the following discussion of your accounting responsibilities as the conservator of an estate. If you have any questions about anything you read in this section of the handbook, discuss them with your lawyer immediately. **L**

**What accounts are and when they are due** You must report to the court on your activities as conservator of the estate no later than one year after your appointment, at least once every two years after that, and when your duties as conservator end. The report must be typewritten or prepared on a computer and contained in a document called a petition or a petition and report. The petition and report must describe what you have done during the time period covered by it and should petition, or ask, the judge to approve your actions. It should also describe the general physical condition, type of residence, level of care, and other circumstances of the conservatee.

The petition and report must be accompanied by a detailed accounting of all transactions in the conservatee's property that occurred in the period covered by the report. The accounting is similar to a business's financial statements, explaining the estate in dollar figures and giving details of estate receipts and expenditures.

The petition and report should explain any entries in the accounting that cannot be readily understood and should describe any sales or other changes in the assets of the conservatorship estate and any other unusual financial transactions. If you or your lawyer want the court to authorize payment of compensation from the conservatee's estate for your services during the period of the report, your request would also be included in the petition and report.

The accounting, the report, and the petition are parts of one document. They are sometimes referred to together as the **accounting**, the **account**, or the **account and report**. In this chapter, the term **accounting** refers to the accounting portion of the document only, **report** or **petition and report** refers to the report portion of the document only, and **account** or **account and report** refers to the entire document.

## WHAT MUST BE INCLUDED IN AN ACCOUNTING

- The value of assets on hand at the start of the reporting period
- The amount of any supplemental appraisals during the reporting period
- All income received by the conservatorship estate during the reporting period
- Gains and losses from sales of assets during the reporting period
- All expenditures of conservatorship funds during the reporting period
- The value of assets on hand at the end of the reporting period

**Format of the accounting** The accounting must be prepared in a special format required for probate accountings. The petition and report are narrative statements. If you have a lawyer, he or she will generally prepare the petition and report, although you will provide the lawyer with most of the information needed to complete that task. You and your lawyer should work out who will prepare the accounting. The rest of this section of the handbook will help you do that. **L**

See Appendix D, "Sample Account and Report," at the back of this handbook.

**The first and subsequent accounts and reports** Each account covers a period of time with specific beginning and ending dates. When the conservatorship ends and the conservator has been discharged, every day it was in effect will have been included in a period covered by an account and report.

The first account and report covers a period that begins on the date that Letters of Conservatorship were issued or sometimes on the earlier date that Letters of Temporary Conservatorship were issued. The period usually ends on the last day of the month before or including the first anniversary of the beginning date. Subsequent accounts may cover up to two-year periods, beginning



with the day after the ending date of the prior account, although the conservator may choose to account for shorter periods. The final account covers the period from the day after the ending date of the last prior account to the date that the conservatorship ends, either by the conservatee's death or restoration to capacity or by removal of the conservator. An account that is not a final account is also called an **account current**.

Some courts schedule hearing dates near the due dates of accounts and reports to monitor their preparation and to see that they have been filed on time. If your court does this and you miss the deadline, you and your lawyer may have to appear in court on the scheduled date and explain why you failed to file your account and report on time. If the account is on file by the scheduled hearing date, the court usually excuses attendance in court on that date.

Courts that do not regularly schedule this kind of hearing still monitor their conservatorship files. If an account and report becomes seriously past due, the court may order you to appear to give an explanation, may order you to file the account and report by a specific future date, or may even remove you as conservator. If you are removed, you will still have to complete and file your account and report.

Whether or not the court schedules a hearing to monitor the completion and filing of an account, every account and report that is filed is assigned a hearing date, usually about a month after it is filed. Your lawyer is generally expected to attend this hearing to answer any questions the court may have concerning the account. If your lawyer attends the hearing, he or she may need your presence in court as well. **L**

Your lawyer must mail advance written notice of the time and place of the hearing on your account and report to the conservatee and to others interested in the conservatorship, and he or she may also be required to send complete copies of the account and report to these persons. **L** The written notice is prepared on Judicial Council form GC-020, *Notice of Hearing Guardianship or Conservatorship*. A copy of this form is included in Appendix F, at the back of this handbook.

If you do not have a lawyer, you will generally be required to attend the hearing on your account and report and will have to see that the written notice is sent.

If the persons given notice don't object to the account and report, you or your lawyer may be excused from attending court, and the account and report will be approved by the judge without a hearing.

On the other hand, if the conservatee or someone else with an interest in the conservatorship files written objections to the account and report or appears at the hearing and advises the court that he or she intends to file them, the hearing will be postponed to give that person an opportunity to do so. After the objections have been filed, the account and report will proceed as a contested matter.

Each court has its own way of handling contested accounts. At the very least, however, the matter will not be resolved quickly unless the parties involved can settle their differences in a way satisfactory to the court. You should not attempt to defend your account and report against objections without a lawyer. **L**

**Preparation of the accounting** Presentation of your account and report to the court is the most important step in your management of the conservatorship estate. You can't afford to wait until the last minute to prepare the accounting portion of the account and report. Therefore, your preparation of the accounting should begin as soon as you begin managing the conservatee's assets. All financial transactions must be carefully documented and organized so the accounting can be thoroughly, promptly, and accurately prepared. The following suggestions will help you reach this goal.

- Place each statement or other document that is received or created by you for each conservatorship asset or bank account in chronological order in a separate file for that asset or account. Review these documents periodically to make sure that none are missing. If any are missing, take steps immediately to obtain replacement copies so that your records remain complete.
- Check statements from banks, stockbrokers, and other institutions promptly on receipt and **reconcile** the cash accounts. Delay in reconciliation may result in the loss of the right to recover missing funds caused by bank errors. Personal finance computer programs are very useful for reconciling cash accounts.
- Investigate automatic deposits and payments to and from the conservatee's existing bank accounts as soon as you become aware of them because they may disclose additional assets or estate obligations you didn't previously know about.
- You should not generally arrange for automatic payments from any conservatorship account you establish because it is too easy to forget that such payments have been made when you prepare your accounting many months later.
- Automatic deposits to an account, like social security payments, cause fewer difficulties than automatic payments from the account, but you should enter them in your check register at the same time every month, no

later than the time you get your statement for the account showing the deposit, and you should be alert to periodic changes in the amounts deposited. All automatic deposits should be made to the main conservatorship checking account rather than to a savings account.

- You must keep track of interest deposits to savings accounts that are not reflected in your check register. Don't rely on passbook-type accounts. You should arrange for all savings accounts to provide monthly or quarterly statements showing interest income and withdrawal activity.
- Withdrawals from savings accounts to meet estate expenses should be deposited into the estate checking account and spent from there rather than directly from the savings account.
- You should try to pay every expense by check rather than cash. If you find it necessary to spend small amounts of cash, it is better to spend your own cash and seek reimbursement from the estate by check rather than to carry estate cash with you for this purpose. In any event, make sure that you get a receipt for all cash purchases and make a note of what was bought, the amount of cash spent, the purpose of the purchase, and the date of the transaction.
- Note the source of each deposit to the checking account in the check register so you will be able to reconstruct the transaction when you prepare your accounting. Most of the time, it is a good idea to use only one checking account for all of the conservatee's finances. However, if you are managing one or more pieces of real property that generate income as well as expenses, you might consider using a separate checking account for each property. If you do that, make sure that each account receives deposits only from income received from the property assigned to it, and that payments are made from that account only for expenses associated with that property. Be alert to bank charges deducted directly from these separate accounts.
- Stock brokerage accounts may come with money-market accounts attached to them that earn interest and allow check writing privileges. This kind of account is useful because it enables the estate to earn interest on amounts invested with a broker that are temporarily not being used to purchase stocks, bonds, mutual fund shares, or other investments sold by the broker. However, you should not routinely pay estate expenses directly from this account. Instead, you should periodically transfer excess cash from it to your regular conservatorship bank account, and then pay all expenses from that account. You should also be alert to automatic interest deposits to this account and automatic deductions from it for the broker's fees and other charges.

**Court requirements for accountings** The law and the court impose high standards on you as conservator in the management of the conservatee's estate. Each transaction must be accounted for in sufficient detail to inform the court how the conservatee's money was spent, what was sold or purchased, and how well income was collected during the period of the account. Every item of income and every expenditure must be described in your records and in the accounting, showing the following about each transaction, in addition to its date and its amount:

- To whom a disbursement was paid, or from whom income was received
- The time period covered by the payment (example: "Rent for May 2002")
- The purpose of the expenditure (example: "Clothing for conservatee")

If you reimburse yourself for expenses paid from your own funds, describe to whom you paid the funds on behalf of the conservatee, the amount of each expenditure, and what was purchased for the conservatee. You must obtain and retain receipts for all of these expenditures and organize them so you can retrieve them if you are required to show them to the court.

At the time you file your accounting, the court will require you to file *original* account statements from banks and other financial institutions or from other institutions such as stockbrokers for all accounts containing cash or assets of the conservatorship estate. The statements must show the balance in each bank account as of the last day of the period covered by the account and report.

The first account and report must also be accompanied by *original* bank statements showing the account balance of each of the conservatee's bank accounts immediately before the date you were appointed conservator. (That is, the date of the court's order appointing you, not the date that your Letters of Conservatorship were issued.) If your account and report shows a balance for any bank account different than the balance shown in the bank's statement for that account, you must explain the differences in your accounting or in your report.

If you could not find the original statements from the conservatee's accounts in his or her papers, you will have to obtain duplicates from the banks or other institutions and explain to the court why you can't file original statements. The time to start arranging for this is as soon as you qualify as conservator, not just before your accounting is due. See the sample letter to the conservatee's bank in Section 5(A) of this chapter.

The court or a person interested in the conservatorship may demand that you produce the records that support the transactions shown in your accounting. Keeping your records organized and complete early in the process and thereafter for as long as you are the conservator will enable you to satisfy the requirements imposed on you when you file and present your accounts and reports.

**Use of an accountant** Accountings must be prepared in a format unique to probate court accountings. Many accountants are unfamiliar with court accountings, which are considerably different from the business financial statements they usually prepare. If you want to use an accountant, you should try to find one who prepares federal estate tax returns for the estates of people who have died. The format of conservatorship accountings is identical to the format used in decedent's estates. It is to some extent based on the requirements of the federal estate tax return.

You may find that the conservatee's estate is too small to support an accountant's fee for maintaining estate records and preparing accountings, particularly if you are also going to request compensation for your services. Even if you can't afford an accountant for all services, you may be able to consult one on an as-needed basis, particularly for advice on how to set up and maintain your record-keeping system.

You should check with your lawyer before you attempt to prepare your accounting yourself or before you hire someone to do it for you. **L**

**Accountings prepared by your lawyer** Your lawyer may prefer to prepare the accounting, have his or her staff prepare it, or may bring in another professional familiar with probate court accountings for this task. **L** If so, you should consider delivering your records or copies of them to your lawyer on an ongoing basis during the year—say, monthly or quarterly, instead of just before an account is due. If you do that, when the due date comes, whoever prepares the accounting should be able to complete it quickly. If records delivered months before the accounting's due date show a problem, there will be more time to resolve it.

**Use of a computer** If you plan to prepare the accounting portion of the account and report yourself, it is recommended that you maintain your records using a personal-finance computer program. You will be able to keep detailed records of income or expenses tailored to your needs, you can easily reconcile your cash accounts, and you may be able to print directly from the program, in final form suitable for filing, some or all of the schedules of your accounting, particularly the schedule of expenditures.

**Small-estate waivers** Conservators of small estates may be excused from making regular reports to the court, but they still must keep complete records of how they manage their conservatee's income and assets. The court may ask for an accounting at any time, and the conservator will have to give a final accounting at the end of the conservatorship. Ask your lawyer whether the estate you are managing qualifies for a small-estate waiver. **L**

## 9. Making Payments from the Estate

A judge will not automatically approve expenditures that you may believe are in the conservatee's interest. Other people involved in the conservatorship may have a legal right to object to particular expenditures as well. If you aren't sure whether an expenditure is proper, or if you think someone might object, speak with your lawyer before you spend the money.

### A. Paying Lawyer's and Conservator's Fees

You, the conservator of the person, the lawyers for each of you, and the conservatee's lawyer, will be entitled to receive reasonable fees—compensation for your services—from the conservatorship estate if they are requested and *if a judge first approves them*. Never pay these fees without prior court authorization. If you do, you may have to reimburse the conservatorship estate or the surety company on your bond from your own pocket, plus interest, and you could be removed as conservator.

You may pay without prior court approval costs incurred by your lawyer at the beginning of the conservatorship, including the court's filing fee and the first year's bond premium. This kind of expense is called an expense of administration, a direct cost of the conservatorship proceeding. Once the conservatorship has been set up and you have collected the conservatee's funds, you may directly pay expenses of administration without prior court approval.

However, many courts will not allow you to reimburse your or your lawyer's photocopy and ordinary postage costs, mileage or other local travel and parking expenses, or your lawyer's secretarial and word processing expenses if you or your lawyer also ask for fees. These costs are considered overhead expenses, to be reimbursed in the compensation approved by the court. Paralegal costs are treated as lawyers' fees, payable only on order of the court.

If you do not ask for compensation for your services, the court may allow you to reimburse yourself for overhead expenses. You will have to keep good



records of these expenses and should not reimburse yourself for them until they have been approved by the court.

Other costs, such as long-distance telephone charges, express-mail charges, or extraordinary travel expenses, may be allowed in the discretion of the court. If there is any question, you should defer direct payment by the estate or estate reimbursement of discretionary costs paid by you or by your lawyer until the court has approved them.

You may not ask the court for fees until 90 days after you have been appointed and you have filed the Inventory and Appraisal with the court. However, if you have good cause, you can ask the court to allow you to request compensation within that time.

You or anyone else eligible to request fees from the conservatorship estate may petition the court for an award of compensation, together or separately, at any time after the initial 90-day period without prior court permission. However, the court may require you as conservator of the estate to file an account and report whenever any eligible person requests fees because the court prefers to consider fee requests when it can see the current condition of the estate as shown in an up-to-date account and report. For this reason, fee requests are usually made as part of accounts and reports, and the requests of conservators of the person and of the estate and their lawyers are usually combined.

Your petition should request specific amounts to be paid to you and your lawyer and should show the judge how you calculated these amounts by describing in detail the number of hours worked, the hourly rate, and the work that was done. The sample account and report in Appendix D includes a declaration from the lawyer supporting his fee request. It does not include a similar statement from the conservator because he is asking for a nominal amount to handle his mother's affairs. However, if you are going to ask for full compensation for your services, you would prepare (or your lawyer would prepare for you, based on information you provide) a declaration describing your services in detail.

To support your request for compensation, you will need to keep a good record of the services you provide. Immediately following is an example of such a record, showing the date each service was performed, a description of each service, and the amount of time spent performing each service, stated in tenths of hours.

You may not ask for fees for 24-hour-a-day care. If the conservatee lives with you, keep track of the time you actually spend tending to his or her needs and affairs. You may be paid only for these hours.

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## SAMPLE RECORD OF SERVICE TO CONSERVATEE

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2002 SERVICES		
Conservatorship of John Jones Lucy Jones, Conservator		
DATE	DESCRIPTION	DURATION OF SERVICE
4/2/02	Took John to grocery store	.75
4/3/02	Phone call to attorney's office about accounting	.2
4/5/02	Reviewed bills, wrote and mailed checks for payment	.9
4/6/02	Sorted through mail and documents, filed, paid bills	2.5
4/8/02	Inventoried furniture in John's house	6.0
4/10/02	Phoned Social Security re late checks	.3
4/12/02	Took John shopping at Target	1.75
4/13/02	Prepared for income tax preparation appointment	1.5
4/16/02	Took John to appointment with Dr. Leone	1.8
4/17/02	Met with accountant for income tax preparation	1.5
4/20/02	Phoned John's sister to report his wishes for birthday party	.3
4/21/02	Picked up completed income tax forms from accountant	.4
4/23/02	Took John to dentist appointment with Dr. Marshall	1.8
4/24/02	Discussed rental of John's house with property manager	.7
4/28/02	Cleaned and repaired John's residence in preparation for rental	5.0
4/30/02	Phoned attorney regarding lease signing	.25
	Total hours:	25.65



The judge will review your and your lawyer's requests for fees and will decide what amounts are reasonable that may be paid from the estate. One of the factors the court considers is the estate's size. Even if the court believes that a request for fees is otherwise reasonable, it may award less than requested because the court believes that the estate is too small to support the requested amount plus all other demands on it.

## **B. Making Gifts from the Estate**

You may not give gifts of estate money or assets to yourself or anyone else without a judge's prior approval. You need court approval, even if the conservatee asks you to give the gift, and even if he or she has given similar gifts in the past.

## **C. Reimbursing Yourself for Expenses You Have Paid**

You may reimburse yourself for small, reasonable expenses that you've paid for the conservatee with your own money, but it's not a good idea to make this a regular practice. Use your own money only in emergencies or as a cash advance for small amounts, even though it may seem convenient at other times, and make sure that you have records and receipts to prove that you've spent your money on the conservatee's behalf.

## **D. Borrowing from the Estate**

You may not borrow the conservatee's money or loan it to anyone else without prior court approval.

## **E. Loaning Money to the Estate**

You may loan money to the conservatorship estate and pay yourself back, but you need court approval to charge interest. Keep good records showing that you've loaned your own money to the estate.

## **AVOID THESE SERIOUS MISTAKES**

- **Never mix your own investments and money with the conservatee's.** Even though it may seem convenient at the time to deposit a check made out to the conservatee into your own bank account, it could get you into

trouble. The conservatee's assets should be kept in accounts in your name as conservator of the estate, using the conservatee's social security number.

- **Do not manage the conservatorship estate so that you or your family or friends profit from it.** For example, if you were to sell the conservatee's car to your son for less than what it was worth without getting a judge's approval, you would be violating your duty as conservator of the estate. Similarly, you may not give your friends the conservatee's furniture or other possessions, nor may you move into the conservatee's home without paying fair rent.
- **Never borrow money from the estate.** You must not use estate funds or the estate's credit to get loans or credit for yourself, even if you will inherit the estate when the conservatee dies.
- **Do not give yourself or anyone else a gift from estate funds without getting a judge's approval first.**
- **Do not pay yourself or the conservator of the person fees from the estate without a judge's approval first.**
- **Do not pay fees with estate funds to your lawyer, to the lawyer for the conservator of the person, or to the lawyer for the conservatee, without getting a judge's approval first.**